

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

Byron White United States Courthouse
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Denver, Colorado 80257
(303) 844-3157

INSTRUCTIONS FOR FILING A MOTION UNDER 28 U.S.C. § 2244 FOR ORDER AUTHORIZING DISTRICT COURT TO CONSIDER SECOND OR SUCCESSIVE PETITION UNDER 28 U.S.C. § 2254 OR MOTION UNDER U.S.C. § 2255.

Permission must be obtained from the court of appeals before a party may file a second or successive petition under 28 U.S.C. § 2254 or motion a under 28 U.S.C. § 2255 in the district court.

1. Use the attached form to file a motion under 28 U.S.C. § 2244 for order authorizing district court to consider second or successive petition under 28 U.S.C. § 2254 or motion under 28 U.S.C. § 2255.
2. Answer completely all the questions on the attached form. *Your failure to provide complete answers may result in the court of appeals denying your motion.*
3. **Attach to your motion copies of the following documents:**
 - A. The § 2254 petition or § 2255 motion you want to file in the district court if the court of appeals grants your motion.
 - B. All § 2254 petitions or § 2255 motions you previously filed in any federal court challenging the judgment of conviction or sentence you now want to challenge.
 - C. All court opinions and orders, final and interlocutory, disposing of the claims in your previous § 2254 petitions or § 2255 motions that challenged the judgment of conviction or sentence you now want to challenge.
 - D. All magistrate judges' reports and recommendations issued in all previous § 2254 petitions or § 2255 motions that challenged the judgment of conviction or sentence you now want to challenge.
4. You must sign the motion in three places at the end of pages 8 and 9.
Your failure to sign the motion or to complete the "proof of service" may result in the court of appeals denying your motion.

5. You must file with the court of appeals the **original and three copies** of your motion and **all documents** attached to it. *Your failure to provide the original and three copies may result in the court of appeals denying your motion.*
6. There is **no fee** for filing a motion under 28 U.S.C. § 2244 for an order authorizing the district court to consider a second or successive petition under 28 U.S.C. § 2254 or motion under 28 U.S.C. § 2255.
7. If your motion seeks relief under **28 U.S.C. § 2254**, you must serve a copy of the motion and all documents attached to it on the **Attorney General** of the State in which you are confined. *Your failure to serve the Attorney General may result in the court of appeals denying your motion.*
8. If your motion seeks relief under **28 U.S.C. § 2255**, you must serve a copy of the motion and all documents attached to it on the **United States Attorney** for the federal judicial district in which you were convicted. *Your failure to serve the United States Attorney may result in the court of appeals denying your motion.*

NOTE: THIS COURT WILL GRANT YOU AUTHORIZATION TO FILE YOUR § 2254 PETITION OR § 2255 MOTION IN THE DISTRICT COURT **ONLY** IF YOU SHOW THAT YOU COULD NOT HAVE PRESENTED YOUR PRESENT CLAIMS IN YOUR PREVIOUS § 2254 PETITION or § 2255 MOTION BECAUSE:

A. (For § **2255 motions** only) The claim relies on “newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found [you] guilty” or,

B. (For § **2254 petitions** only) The claim relies on “a factual predicate that could not have been previously discovered through the exercise of due diligence” and “the facts underlying the claim, would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found [you] guilty of the underlying offense” or,

C. (For **both** § 2254 petitions and § 2255 motions) The claim relies on “a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court [of the United States], that was previously unavailable.”